



STATE OF CALIFORNIA
FAIR POLITICAL PRACTICES COMMISSION
428 J Street • Suite 620 • Sacramento, CA 95814-2329
(916) 322-5660 • Fax (916) 322-0886

August 12, 2015

Joseph M. Montes
City Attorney, City of Santa Clarita
Burke, Williams & Sorenson, LLP
444 South Flower Street, Suite 2400
Los Angeles, CA 90071-2953

Re: Your Request for Informal Assistance
Our File No. I-15-103

Dear Mr. Montes:

This letter responds to your request for advice on behalf of Santa Clarita Councilmembers Laurene Weste and Timben Boydston regarding their duties under the conflict of interest provisions of the Political Reform Act (the “Act”).¹ Nothing in this letter should be construed to evaluate any conduct that has already taken place. In addition, this letter is based on the facts presented. The Fair Political Practices Commission (the “Commission”) does not act as the finder of fact. (*In re Oglesby* (1975) 1 FPPC Ops. 71.) Because your questions are general in nature and not limited to specific governmental decisions, we are treating your request as one for informal assistance.²

Please note that we are only providing advice under the conflict of interest provisions of the Act and not under other general conflict of interest prohibitions such as common law conflict of interest or Section 1090.

QUESTION

Does the Act prohibit Councilmembers Weste and Boydston from taking part in decisions regarding the future development of a city block in light of their respective interests near the project area?

CONCLUSION

We find insufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the Councilmember Weste’s residential property, which is within 500 feet of the project.

¹ The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

² Informal assistance does not provide the requestor with the immunity provided by an opinion or formal written advice. (Section 83114; Regulation 18329(c)(3).)

Councilmember Weste is therefore prohibited from making, participating in making, or using her position to influence any decisions regarding the project.

In regard to Councilmember Boydston, we do not find a foreseeably measurable impact on his interest in his non-profit employer. Based upon the facts provided, the Act does not prohibit Councilmember Boydston from taking part in decisions regarding the project.

FACTS

Your office serves as the City Attorney for the City of Santa Clarita (the “City”) and is requesting advice on behalf of Councilmembers Timben Boydston and Laurene Weste. Under the Redevelopment Dissolution Law, the City’s Redevelopment Agency has been dissolved, and the Santa Clarita Successor Agency is in the process of winding down the affairs of the former Redevelopment Agency. As part of this wind down, the Successor Agency is implementing the Long Range Property Management Plan (the “LRPMP”). Dissolution laws require that former real property assets of the Redevelopment Agency be disposed of consistent with the approved LRPMP.

Property #2 in the LRPMP (the “Redevelopment Block”) is made up of 9 parcels, which comprise an entire block, and was originally acquired by the Redevelopment Agency with the intent of redeveloping the block. Under property disposition procedures adopted by the Oversight Board that monitors the activities of the Successor Agency, Successor Agency staff issued a Request for Qualifications seeking developers interested in acquiring and developing the Redevelopment Block. Proposed development projects for the Redevelopment Block potentially include a parking structure, mixed-use (residential and retail) multi-story buildings, and a movie theater. Currently, the Redevelopment Block consists of vacant undeveloped lots and structures and is within the city’s urban center zoning classification.

As provided by State law, the Santa Clarita City Council acts as the governing body for the Successor Agency. In connection with the sale of the Redevelopment Block, the City Council acting as the Successor Agency governing body, and the governing body of the City, may need to approve Exclusive Negotiation Agreement(s) with potential developers, purchase and sale agreements (to sell all or portions of the Redevelopment Block), and possibly economic development agreements (to provide public assistance to part of the development).

Councilmember Weste owns property within 500 feet of the Redevelopment Block. This property is approximately seven acres and serves as her residence. Railroad Avenue and a Union Pacific Railroad right of way separate the property from the Redevelopment Block. There is also a hill between the Redevelopment Block and her residence, which currently blocks views of the Redevelopment Block from her residence. Access between the Redevelopment Block and her property currently requires traveling a distance of approximately 2,990 lineal feet.

Councilmember Boydston serves as the salaried Executive Director of the Canyon Theatre Guild (the “CTG”). The CTG is a nonprofit theater company that owns and operates the Canyon Theatre. The CTG puts on several live theater productions per year. The Theatre is located at 24242 Main Street, which is approximately 1,220 lineal feet from the Redevelopment Block along Main Street.

ANALYSIS

Section 87100 prohibits any public official from making, participating in making, or using his or her position to influence a governmental decision in which the official has a financial interest. (Section 87103.) A conflict of interest may arise only when the reasonably foreseeable financial effect of a governmental decision on a public official's interests is material. Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. Interests from which a conflict of interest may arise are defined in Section 87103.

Councilmember Weste

Under Sections 82033 and 87103(b), an official has an interest in any real property owned directly, indirectly, or beneficially by the public official, or his or her immediate family, if the interest has a fair market value of \$2,000 or more. For Councilmember Weste, the only interest identified that may be implicated by the decision is her real property interest in her residence. Accordingly, we must determine whether the financial effect on her interest in her residence resulting from decisions regarding the Redevelopment Block is both foreseeable and material.

Generally, a financial effect is presumed to be reasonably foreseeable if the interest is a named party in, or the subject of, a governmental decision before the official or the official's agency. (Regulation 18701(a).) If the interest is "not explicitly involved" in the decision, a financial effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. A financial effect need not be likely to be considered reasonably foreseeable. (Regulation 18701(b).) Different standards apply to determine whether a reasonably foreseeable financial effect on an interest will be material depending on the nature of the interest. (Regulation 18702.) The materiality standards for any particular interest are provided in Regulations 18702.1 through 18702.5.

Based upon the facts provided, Councilmember Weste's real property interest is not explicitly involved in decisions regarding the Redevelopment Block and a financial effect is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. Moreover, any reasonably foreseeable effect on a residential interest in real property is material whenever the governmental decision affects real property located within 500 feet of the property line of the official's property, unless the Commission determines that there are sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the property. (Regulation 18702.2(a)(11).)

In this case, a hill geographically separates the Redevelopment Block from Councilmember Weste's property and blocks any view of the Redevelopment Block from the property. Railroad Avenue, a railway, and the railroad's right of way also separate the property from the Redevelopment Block. In light of these obstructions, the distance of travel between Councilmember Weste's property and the Redevelopment Block using existing roadways is approximately 2,990 feet, slightly more than a half mile. Nonetheless, while these facts reduce the likelihood of a reasonably foreseeable material effect, they are countered by the fact that Councilmember Weste's

residential property currently consists of 7 acres within a very close proximity to the Redevelopment Block, which encompasses an entire city block in the Urban Center of the city.

Considering the likelihood that the Redevelopment Project may affect the value of Councilmember Weste's residential property including, but not limited to, changing the development potential of the large tract bordering the city's Urban Center, we do not find sufficient facts to indicate that there will be no reasonably foreseeable measurable impact on the official's property. Councilmember Weste is therefore prohibited from making, participating in making, or using her position to influence any decisions regarding the Redevelopment Block.

In light of our conclusion that the Act prohibits Councilmember Weste from taking part in decisions regarding the Redevelopment Block, you have asked that we consider whether any of the exceptions to the Act's conflict of interest provisions found in former Regulation 18704.4 may apply. (We note that exceptions in former Regulation 18704.4 have been consolidated into Regulation 18704(d), which took effect on July 22, 2015.) However, you have not provided any facts indicating that any of the exceptions may apply. Most generally, Regulation 18704(d)(2) (former Regulation 18704.4(a)(2)) permits officials, such as Councilmember Weste, to appear as a member of the general public during a public meeting of the agency to represent themselves on matters related solely to their personal interests, including an interest in real property owned solely by an official or the official's immediate family. However, this exception is interpreted narrowly and does not allow Councilmember Weste to provide general comments regarding Redevelopment Block. Comments must be limited to her interest in real property, and care should be taken to clarify that she is not acting in an official capacity. (*McHugh* Advice Letter, No. I-98-324; *Gallagher* Advice Letter, supra; and *Larsen* Advice Letter, No. A-87-151.)

Councilmember Boydston

Under Section 87103(c), a public official has an economic interest in any source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (Section 87103(c).) For Councilmember Boydston, the only interest identified that may be implicated by the decision is his interest in his non-profit employer, the CTG, as a source of income. Accordingly, we must determine whether the financial effect on his interest in the CTG resulting from decisions regarding the Redevelopment Block is both foreseeable and material.

Based upon the facts provided, Councilmember Boydston's interest in the CTG is not explicitly involved in decisions regarding the Redevelopment Block. As stated above, a financial effect on an interest not explicitly involved in a decision is reasonably foreseeable if the effect can be recognized as a realistic possibility and more than hypothetical or theoretical. For an interest in a non-profit source of income, any reasonably foreseeable effect on the interest is material if the nonprofit "will receive a measurable financial benefit or loss, or the official knows or has reason to know that the nonprofit has an interest in real property that will be financially affected under the standards applied to a financial interest in Regulation 18702.2." (Regulation 18702.3(a)(3).)

As applicable for purposes of the CTG's property, an effect on the property will be material under Regulation 18702.2 if the decision:

“(7) Would change the development potential of the parcel of real property;

“(8) Would change the income producing potential of the parcel of real property....

“(9) Would change the highest and best use of the parcel of real property in which the official has a financial interest;

“(10) Would change the character of the parcel of real property by substantially altering traffic levels or intensity of use, including parking, of property surrounding the official's real property parcel, the view, privacy, noise levels, or air quality, including odors, or any other factors that would affect the market value of the real property parcel in which the official has a financial interest;

[¶]...[¶]

“(12) Would cause a reasonably prudent person, using due care and consideration under the circumstances, to believe that the governmental decision was of such a nature that its reasonably foreseeable effect would influence the market value of the official’s property.”

From the facts provided, the CTG is a nonprofit theater company that owns and operates the Canyon Theatre and puts on several live theater productions per year. While the Canyon Theatre is within approximately 1,220 feet of the Redevelopment Block project, which may include a movie theatre, any financial effect is speculative at best. For example, while a movie theatre may compete for customers with the live production theatre, it is also a possibility that the Redevelopment Block project as a whole may draw additional customers to the Canyon Theatre. Considering that a live production theatre is a distinctly different attraction than a movie theatre, we do not find a foreseeably measurable impact on the CTG or the CTG’s property resulting from decisions regarding the Redevelopment Block. Accordingly, the Act does not prohibit Councilmember Boydston from taking part in decisions regarding the Redevelopment Block.

If you have other questions on this matter, please contact me at (916) 322-5660.

Sincerely,

Hyla P. Wagner
General Counsel

/s/

By: Brian G. Lau
Senior Counsel, Legal Division

BGL:jgl